

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013041060

ORDER DENYING MOTION TO
STRIKE

On April 30, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) naming the Temecula Valley Unified School District (District) as respondent. The complaint contains two issues. The first issue alleges that the Student was deprived a free appropriate public education (FAPE) from August 2011 through November 9, 2011, in that the District offered inappropriate placement in services. Issue two alleges that the Student was deprived of a FAPE for failure to implement the February 7, 2012 Individualized Education Program (IEP). Student had previously filed with OAH a due process request in September 18, 2012 in OAH Case Number 2012090476, which was withdrawn on February 26, 2013.

On March 9, 2013, the District, through its counsel Peter Sansom, responded to the complaint with a letter response to the complaint to Student's counsel, Megan M. Nunez, with a copy filed with OAH. Student's co-counsel, Jennifer Day, replied to the March 9, 2013 letter by letter dated March 14, 2013, a copy of which was also filed with OAH. This letter responds directly to the response to the complaint and also states that, because of the prior case, Student declines to mediate with the District.

On May 14, 2013, the District filed a motion to strike the March 14, 2013 letter from OAH files, or in the alternative, to have the letter placed under confidential seal. The statement which the District seeks to strike is: "As you are aware, the two parties mediated their dispute previously and reached what our clients believed was a mutual settlement agreement. Days later, she was informed that the matter was not resolved, and that the District did not actually authorize the agreement that the parties had spent an entire day negotiating. We believe that mediation conducted in the same manner would be a waste of resources."

The District relies solely on the provisions of Section 3086, subdivision (b)(2) of Title 5 of the California Code of Regulations. On May 15, 2013, Student filed her response. Student contends that the District has interpreted Section 3096 incorrectly. The District filed a response to Student's opposition on May 17, 2013.

Section 3086, subsection (b) (2) applies only to communications made during the mediation itself. The statement at issue does not involve any statements made during the mediation. Thus Section 3086 does not apply.

District's motion to strike, or place the March 14, 2013 letter under seal, is hereby DENIED.

IT IS SO ORDERED.

Dated: May 30, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings